

# COMMERCIAL LEASE

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## COMMERCIAL LEASE

# DRAFT

### Preamble

This lease is made and entered into on \_\_\_\_ day of March 2006, by and between Harpreet S Chaudhary ("Landlord"), and City of Milpitas and the Milpitas Redevelopment Agency ("Tenant").

Landlord, for and in consideration of the rent to be paid by Tenant and of the covenants and provisions to be kept and performed by Tenant under this lease, hereby leases to Tenant, and Tenant agrees to lease from Landlord, the following: the real property commonly known as 82 N Main street (entire building) ("the Property"),

### ARTICLE 1. TERM OF LEASE

#### Original Term

Section 1.01. This lease shall be for a term of Three Years (2 Years), with the tenant option to extend the lease for ten months for the entire building or portion of it, commencing at 12:01 A.M. on 31st, March 2006 ("Commencement Date"), and ending at 12:01 A.M. on February 1<sup>st</sup> 2009 ("Original Term"), unless terminated earlier pursuant to the provisions of this lease. If at any time the tenant occupies less than the entire building space, tenant agrees to share the common areas such as restrooms, hallways and parking with other tenants.

#### Holding Over

Section 1.03. In the event Tenant holds over and continues in possession of the Premises after expiration of the Original Term Tenant's continued occupancy of the Premises shall be considered a month-to-month tenancy subject to all the terms and conditions of this lease. However the rent shall be increased to \$5,300.00 per month.

### ARTICLE 2. RENT

#### Minimum Rent

Section 2.01. Tenant agrees to pay to Landlord, a fixed minimum rental for the use and occupancy of the Premises (the "Minimum Rent"). The amount of Minimum Rent payable for each month during the Original Term shall \$5,000.00 per month, including any NNN Charges. Rent amount based on 3,450 SF @ \$1.40.00/SF

The Minimum Rent including NNN shall be payable on the 1<sup>st</sup> day of each and every month commencing April 1<sup>st</sup> 2006, at the office of Landlord at 46540 Sentinel Dr, Fremont CA 94539, or at any other place or places as Landlord may from time to time designate by written notice delivered to Tenant. Minimum Rent for partial calendar months occurring at the commencement and termination of the term of this lease shall be prorated accordingly.

#### Adjustments in Minimum Rent

Section 2.02. The minimum rent shall be not be adjusted for the duration of the original lease term.

#### Initial Payments of Minimum Rent including NNN

Section 2.03. The Tenant, at Lease signing, shall deposit with the landlord a security deposit in the amount of \$5,000 (five thousand dollars) for the performance of the lease. The Tenant shall, upon Lease signing, receive the keys to the Property and have the right to move equipment and supplies into the Property. Security deposit shall be returned to tenant at the end of the Original Term, and after landlord has received the keys of the property from tenant.

## Andrew Brozyna

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**From:** Ed Boscacci [EBOSCACCI@BKF.com]

**Sent:** Monday, March 13, 2006 1:16 PM

**To:** Andrew Brozyna

Andrew,

The attached shows the current floodplain lines with the building and garage footprints. The Winsor Avenue side of the project was not removed and should be used to set the flood hazard boundary. I understand that there is no curb on Winsor Avenue, so it is not clear what should be used as the basis for setting Zone AO water levels. The flow line elevation is about elevation 12.

The garage will be a barrier to flows against the Library. Calling the building floodproofed may be an alternative. However, the door from the Library to the garage would need to be floodproofed.

The north wing is even more of a bureaucratic dilemma. The outside walls are within Zone A - elevation 12. The building is more than 2 feet above elevation 12 and meets City floodplain ordinance criteria. There is an interior portion of the building that is within Zone AO, and would not meet the ordinance criteria, even though it is surrounded by building. The FEMA mapping does not match physical reality. We are looking for a way to satisfy the criteria. Again, calling the building floodproofed may be the best response.

Ed Boscacci  
BKF Engineers  
255 Shoreline Drive, Suite 200  
Redwood City, CA 94065

Direct (650) 482-6334  
BKF Reception (650) 482-6300  
FAX (650) 482-6399

3/13/2006

## ARTICLE 3. USE OF PREMISES

### Permitted Use

Section 3.01. During the term of this lease (including the Original Term and the Extended Term, if any), the Premises shall be used for the exclusive purpose of use as an general office use and for no other purpose. Tenant shall not use or permit the Premises to be used for any other purpose, without the prior written consent of Landlord.

The Tenant has been advised by the landlord of the scheduled work to be started by the City of Milpitas for the streetscape, Under grounding of the utilities and other public works which may detrimentally affect the access of the tenant to the building.

### Operation of Business

Section 3.02. During the term of this lease, Tenant shall, unless prevented by conditions beyond Tenant's control, conduct business of the type and nature specified in Section 3.01 of this lease on the Premises in a diligent and businesslike manner.

### Insurance Hazards

Section 3.03. Tenant shall not commit or permit the commission of any acts on the Premises nor use or permit the use of the Premises in any manner that will increase the existing rates for or cause the cancellation of any fire, liability, or other insurance policy insuring the Premises or the improvements on the Premises. Tenant shall, at its own cost and expense, comply with any and all requirements of Landlord's insurance carriers necessary for the continued maintenance at reasonable rates of fire and liability insurance policies on the Premises and the improvements on the Premises.

### Waste or Nuisance

Section 3.04. Tenant shall not commit or permit the commission by others of any waste on the Premises; Tenant shall not maintain, commit, or permit the maintenance or commission of any nuisance as defined in Civil Code Section 3479 on the Premises; and Tenant shall not use or permit the use of the Premises for any unlawful purpose.

### Compliance With Laws

Section 3.05. Tenant shall at Tenant's own cost and expense comply with all statutes, ordinances, regulations, and requirements of all governmental entities, both federal and state and county or municipal, [including those requiring capital improvements to the Premises,] relating to Tenant's use and occupancy of the Premises whether those statutes, ordinances, regulations, and requirements are now in force or are subsequently enacted. The judgment of any court of competent jurisdiction, or the admission by Tenant in a proceeding brought against Tenant by any government entity, that Tenant has violated any such statute, ordinance, regulation, or requirement shall be conclusive as between Landlord and Tenant and shall constitute grounds for termination of this lease by Landlord.

## ARTICLE 4. TAXES AND UTILITIES

### Utilities

Section 4.01. Tenant shall pay, and hold Landlord and the property of Landlord free and harmless from, all charges for the furnishing of electricity, telephone service, and other public utilities to the Premises during the term of this lease. All such charges shall be paid by Tenant directly to the provider of the service and shall be paid as they become due and payable but in any event before delinquency.

Any charges for Water, Sewer, garbage pickup and disposal services that are paid by the Landlord shall be reimbursed by the tenant on receipt of the landlord's bill.

#### Personal Property Taxes

Section 4.02. Tenant shall pay before they become delinquent all taxes, assessments, and other charges levied or imposed by any governmental entity on the furniture, trade fixtures, appliances, and other personal property placed by Tenant in, on, or about the Premises including, without limiting the generality of the other terms used in this section, any shelves, counters, vaults, vault doors, wall safes, partitions, fixtures, machinery, plant equipment, office equipment, television or radio antennas, and communication equipment brought on the Premises by Tenant.

#### Real Property Taxes

Section 4.03. All real property taxes and assessments levied or assessed against the Premises by any governmental entity, including any special assessments imposed on or against the Premises for the construction or improvement of public works in, on, or about the Premises, shall be paid, before they become delinquent, by Landlord.

### ARTICLE 5. ALTERATIONS AND REPAIRS

#### Condition of Premises

Section 5.01. Tenant accepts the Premises, as well as the Improvements located on the Premises, in their present condition and stipulates with Landlord that the Premises and Improvements are in good, clean, safe, and tenantable condition as of the date of this lease. Tenant further agrees with and represents to Landlord that the Premises have been inspected by Tenant, that it has received assurances acceptable to Tenant by means independent of Landlord or any agent of Landlord of the truth of all facts material to this lease, and that the Premises are being leased by Tenant as a result of its own inspection and investigation and not as a result of any representations made by Landlord or any agent of Landlord except those expressly set forth in this lease. Landlord shall install or have install a security door on second floor prior to tenant moving into the premises.

#### Maintenance by Landlord

Section 5.02. Landlord shall, at its own cost and expense, maintain in good condition and repair the structural elements of the Building. For purposes of this section, "structural elements" shall mean the exterior roof, exterior walls, structural supports and foundation of the Building. Landlord shall not be liable for any damages to Tenant or the property of Tenant resulting from Landlord's failure to make any repairs required by this section unless written notice of the need for those repairs has been given to Landlord by Tenant and Landlord has failed for a period of 30 days after receipt of the notice, unless prevented by causes not the fault of the Landlord, to make the needed repairs. Notwithstanding anything in this section to the contrary, Tenant shall promptly reimburse Landlord for the full cost of any repairs made pursuant to this section required because of the negligence or other fault, other than normal and proper use, of Tenant or its employees or agents or subtenants, if any.

Landlord and its agents shall have the right to enter the Premises at all reasonable times, as described in Section 5.06, (and at any time during an emergency) for the purpose of inspecting them or to make any repairs required to be made by Landlord under this lease. The tenant shall replace the carpet on first floor with a commercial grade at the expiry of the lease.

#### Maintenance by Tenant

Section 5.03. Except as otherwise expressly provided in Section 5.02 of this lease, Tenant shall at its own cost and expense keep and maintain all portions of the Premises and all Improvements located on the Premises in good order and repair and in as safe and clean a condition as they were when received by Tenant from Landlord, reasonable wear and tear excepted. Tenant's obligation to repair shall specifically include necessary repairs to interior walls, floor coverings, ceilings the interior portions of all doors.

#### Common area maintenance

Section 5.04. Landlord shall maintain the exterior of the building including Paved Driveways and parking areas, landscaping for the premises and painting and maintenance of the exterior walls and doors and the Heating and ventilation system in good condition at his own cost. The Tenant shall however be responsible for the general and routine clean up of the rented space including the grounds and the parking lot.

#### Alterations and Liens

Section 5.05. Tenant shall not make or permit any other person to make any alterations to the Premises or to any Improvements on the Premises without the prior written consent of Landlord. Landlord shall not unreasonably withhold this consent. Tenant shall keep the premises free and clear from any and all liens, claims, and demands for work performed, materials furnished, or operations conducted on the Premises at the instance or request of Tenant. Furthermore, any and all alterations, additions, improvements, and fixtures, except furniture and trade fixtures, made or placed in or on the Premises by Tenant or any other person shall on expiration or earlier termination of this lease, become the property of Landlord and remain on the Premises. Landlord shall have the option, however, on expiration or termination of this lease, of requiring Tenant, at Tenant's sole cost and expense, to remove any or all such alterations, additions, improvements, or fixtures from the Premises.

#### Inspection by Landlord

Section 5.06. Tenant shall permit Landlord or Landlord's agents, representatives, or employees to enter the Premises Monday through Friday during normal business hours, following a 24 hour telephonic notice by landlord or landlords agent for the purpose of inspecting the Premises to determine whether Tenant is complying with the terms of this lease, for the purpose of doing other lawful acts that may be necessary to protect Landlord's interest in the Premises, or for the purpose of performing Landlord's duties under this lease. Access to the premises will be restricted as requested by the U.S. Government, landlord's access shall be to the greatest extent allowable subject to any applicable governmental restrictions.

#### Surrender of Premises

Section 5.07. On expiration or earlier termination of this lease, Tenant shall promptly surrender and deliver the Premises to Landlord in as good condition as they are now at the date of this lease, excluding reasonable wear and tear, and repairs required to be made by Landlord under this lease.

### ARTICLE 6. INDEMNITY AND INSURANCE

#### Hold-Harmless Clause

Section 6.01. Tenant agrees to protect, indemnify, and save Landlord harmless from and against any all liability to third parties resulting from Tenant's occupation and use of the Premises, specifically including, without limitation, any claim, liability, loss, or damage arising by reason of:

(a) The death or injury of any person or persons, including Tenant or any person who is an employee or agent of Tenant, or by reason of the damage to or destruction of any property, including property owned by Tenant or any person who is an employee or agent of Tenant, and caused or allegedly caused by either the condition of the Premises, or some act or omission of Tenant or of some agent, contractor, employee, servant, subtenant, or concessionaire of Tenant on the Premises;

(b) Any work performed on the Premises or materials furnished to the Premises at the instance or request of Tenant or any agent or employee of Tenant; and

(c) Tenant's failure to perform any provision of this lease or to comply with any requirement of law or any requirement imposed on Landlord or the leased premises by any duly authorized governmental agency or political

subdivision.

#### Liability and Property Damage Insurance

Section 6.02. Tenant shall, at its own cost and expense, procure and maintain during the entire term of this lease a Commercial General liability insurance and property damage insurance issued by an insurance company acceptable to Landlord and insuring Landlord against loss or liability caused by or connected with Tenant's occupation and use of the Premises under this lease in amounts not less than One million dollars per occurrence and Two million dollars aggregate.

The insurance required under this section shall be issued by a responsible insurance company or companies authorized to do business in California and shall be in a form reasonably satisfactory to Landlord. Tenant shall within 15 days of the date of this lease, deposit with Landlord a certificate showing that insurance to be in full force and effect.

#### Tenant's Personal Property

Section 6.03. Tenant shall, during the full term of this lease and any renewals or extensions thereof, maintain at Tenant's own cost and expense an insurance policy issued by a reputable company authorized to conduct insurance business in California insuring for their full insurable value all fixtures and equipment and, to the extent possible, all merchandise that is, at any time during the term of this lease, in or on the Premises against damage or destruction by fire, theft, or the elements.

#### Cancellation Requirements

Section 6.04. Each of the insurance policies shall be in a form reasonably satisfactory to Landlord and shall carry an endorsement that, before changing or canceling any policy, the issuing insurance company shall give Landlord at least 30 days' prior written notice. Duplicate originals or certificates of all such insurance policies shall be delivered to Landlord.

### ARTICLE 7. SIGNS AND TRADE FIXTURES

#### Installation and Removal of Trade Fixtures

Section 7.01. Tenant shall have the right at any time and from time to time during the term of this lease, at Tenant's sole cost and expense, to install and affix in, to, or on the Premises any items, herein called "trade fixtures," for use in Tenant's trade or business that Tenant may, in Tenant's sole discretion, deem advisable. Any and all trade fixtures that can be removed without structural damage to the Premises or any building or improvements on the Premises shall, subject to Section 7.02 of this lease, remain the property of the Tenant and may be removed by Tenant at any time before the expiration or earlier termination of this lease, provided Tenant repairs any damage caused by the removal. The Tenant shall have the right to install up to three (3) Global Positioning System (GPS) receiver antennae on the roof plus the associated wiring.

#### Unremoved Trade Fixtures

Section 7.02. Any trade fixtures described in this Article that are not removed from the Premises by Tenant within 7 days after the expiration or earlier termination regardless of cause, of this lease shall be deemed abandoned by Tenant and shall automatically become the property of Landlord as owner of the real property to which they are affixed.

#### Signs

Section 7.03. Tenant may not without the express written consent of the landlord erect, maintain, permit, and from



time to time remove any signs in or about the Premises. In case tenant receive such permission any signs erected or maintained by Tenant shall comply with all requirements of any governmental authority with jurisdiction.

## ARTICLE 8. DESTRUCTION OF PREMISES

### Landlord's Obligation to Repair

Section 8.01. Except as otherwise provided in Section 8.02 below, if at any time during the Original Term of this lease or any Extended Term, the Building on the Premises is damaged or destroyed by any cause, Landlord shall promptly repair, rebuild, or restore the Building to substantially the same condition as the Building was delivered to Tenant at the commencement of this lease (i.e., exclusive of tenant fixtures and equipment) and shall be entitled for that purpose to any and all insurance proceeds. Landlord shall have the obligation to repair, rebuild, or restore described in this section whether or not the insurance proceeds paid to Landlord are sufficient to cover the total cost of repair, restoration, or rebuilding. Landlord shall commence repair, restoration, or rebuilding, as appropriate, not later than 30 days after occurrence of the event causing damage or destruction and shall cause construction to be completed not later than 180 days after the occurrence of the event causing damage or destruction. Landlord's obligation to commence and complete construction within the time periods described in this section shall not be extended by the fact that Landlord may not yet have been paid the insurance proceeds. In the event Landlord does not commence or complete construction within the time periods described in this section, Tenant shall have the right to terminate this lease by giving Landlord written notice within 10 days after expiration of either time period.

### Landlord's Right to Terminate Lease

Section 8.02. Notwithstanding Section 8.01, Landlord shall have the right to terminate this lease and shall have no obligation to repair, restore, or rebuild the Premises or the Building under any of the following circumstances:

(a) Damage or destruction from an insured casualty when the damage or destruction cannot reasonably be repaired, restored, or rebuilt within a period of 180 days;

(b) Damage or destruction from an uninsured casualty when the cost of repair, restoration, or rebuilding exceeds a total of 45 percent of the then replacement cost of the Building;

(c) Damage or destruction from an insured or uninsured casualty occurring during the last One years of the Original Term of this lease, if Tenant has not before occurrence of the casualty elected to extend the Original Term of the lease, or occurring at any time during the Extended Term, if any, of this lease.

If Landlord elects to terminate this lease under any of the above circumstances, Landlord shall give written notice to Tenant not later than 30 days after occurrence of the casualty.

### Abatement of Rent

Section 8.03. If damage or destruction to the Premises renders the operation of Tenant's business impossible and Tenant in fact ceases to operate its business, the rent required under this lease shall abate during the period in which Landlord is required to perform repairs or restoration, or to rebuild. Tenant shall also be excused from the payment of taxes and insurance attributable to that repair, restoration, or rebuilding period. In the event Tenant is able to continue partial operation of its business, Tenant shall continue to pay the monthly percentage rent provided for under this lease, but the minimum monthly rent shall be reduced during the period of repair, restoration, or rebuilding by the percentage of unusable area to the total leased area by the tenant.

## ARTICLE 9. CONDEMNATION

### Total Condemnation

Section 9.01. If at any time during the term of this lease, title and possession of all of the Premises is taken under

the power of eminent domain by any public or quasi-public agency or entity, this lease shall terminate as of 12:01 A.M. of the date actual physical possession of the Premises is taken by the agency or entity exercising the power of eminent domain, and both Landlord and Tenant shall thereafter be released from all obligations under this lease, except those described in Section 9.04.

#### Termination Option for Partial Condemnation

Section 9.02. If at any time during the term of this lease, title and possession of only a portion of the Premises is taken under the power of eminent domain by any public or quasi-public agency or entity, Tenant may, at Tenant's option, terminate this lease if more than 35 percent of the floor space of the Building or more than 35 percent of the parking area of the Premises is taken under the power of eminent domain. If Tenant elects to exercise the option granted under this section, Tenant shall give Landlord at least 30 days prior written notice within 14 days after Tenant receives notice of the taking that designates the precise area of the Premises to be taken. This lease shall terminate as of the date specified for termination in Tenant's notice, or on the date actual physical possession of the Premises is taken by the public or quasi-public agency or entity, whichever date is earlier.

#### Partial Condemnation Without Termination

Section 9.03. If Tenant fails to exercise the option described in Section 9.02 of this lease or if the portion of the Premises taken under the power of eminent domain is insufficient to give rise to the option described in Section 9.02 of this lease:

(a) This lease shall terminate as to the portion of the Premises taken by eminent domain as of 12:01 A.M. of the day actual physical possession of that portion of the Premises is taken by the agency or entity exercising the power of eminent domain (the "date of taking");

(b) The Minimum Rent specified in Section 2.01 of this lease shall, after the date of taking, be reduced by an amount that bears the same ratio to the minimum rent specified in Section 2.01 of this lease as the square footage ground area of the portion of the Premises taken under the power of eminent domain bears to the total square footage ground area of the Premises as of the date of this lease; and

(c) Landlord, at Landlord's own cost and expense, shall remodel and reconstruct the Building remaining on the portion of the Premises not taken by eminent domain into a single efficient architectural unit as soon after the date of taking, or before, as can be reasonably done; provided, however, that neither the Minimum nor Percentage Rent specified in this lease shall be abated or reduced, except as provided in subparagraph (b) of this section, during remodeling and reconstruction.

#### Condemnation Award

Section 9.04. If at any time during the term of this lease, title and possession of all or any portion of the Premises is taken under the power of eminent domain by any public or quasi-public agency or entity, the compensation or damages for the taking shall be awarded to and be the sole property of Landlord. Tenant hereby waives any and all rights to share in any damages or award.

### ARTICLE 10. DEFAULT, ASSIGNMENT, AND TERMINATION

#### Restriction Against Subletting or Assignment

Section 10.01. Tenant shall not encumber, assign, or otherwise transfer this lease, any right or interest in this lease, or any right or interest in the Premises or any of the Improvements that may now or hereafter be constructed or installed on the Premises without first obtaining the express written consent of Landlord. Tenant shall not sublet the Premises or any part of the Premises or allow any other person, other than Tenant's agents, servants, and employees, to occupy the Premises or any part of the Premises without the prior written consent of Landlord. A consent by Landlord to one assignment, one subletting, or one occupation of the Premises by another person shall not be

deemed to be a consent to any subsequent assignment, subletting, or occupation of the Premises by another person. Any encumbrance, assignment, transfer, or subletting without the prior written consent of Landlord, whether voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of Landlord, terminate this lease. The consent of Landlord to any assignment of Tenant's interest in this lease or the subletting by Tenant of the Premises or parts of the Premises shall not be unreasonably withheld.

#### Default Defined

Section 10.02. The occurrence of any of the following shall constitute a material default and breach of this lease by Tenant:

(a) Any failure by Tenant to pay the rent or to make any other payment required to be made by Tenant under this lease (when that failure continues for 7 days after Landlord gives written notice of the failure to Tenant).

(b) The abandonment or vacation of the Premises by Tenant (the absence of Tenant from or the failure by Tenant to conduct business on the Premises for a period in excess of 14 consecutive days shall constitute an abandonment or vacation for purposes of this lease).

(c) A failure by Tenant to observe and perform any other provision of this lease to be observed or performed by Tenant, when that failure continues for 30 days after written notice of Tenant's failure is given by Landlord to Tenant; provided, however, that if the nature of that default is such that it cannot reasonably be cured within 30-day period, Tenant shall not be deemed to be in default if Tenant commences that cure within the 30-day period and thereafter diligently prosecutes it to completion.

(d) The making by Tenant of any general assignment for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, it is dismissed within 60 days); the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this lease, when possession is not restored to Tenant within 30 days; or the attachment, execution, or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this lease, when that seizure is not discharged within 30 days.

#### Termination of Lease and Recovery of Damages

Section 10.03. In the event of any default by Tenant under this lease, in addition to any other remedies available to Landlord at law or in equity, Landlord shall have the right to terminate this lease and all rights of Tenant hereunder by giving written notice of the termination. No act of Landlord shall be construed as terminating this lease except written notice given by Landlord to Tenant advising Tenant that Landlord elects to terminate the lease. In the event Landlord elects to terminate this lease, Landlord may recover from Tenant:

(a) The worth at the time of award of any unpaid rent that had been earned at the time of termination of the lease;

(b) The worth at the time of award of the amount by which the unpaid rent that would have been earned after termination of the lease until the time of award exceeds the amount of rental loss that Tenant proves could have been reasonably avoided;

(c) The worth at the time of award of the amount by which the unpaid rent for the balance of the term of this lease after the time of award exceeds the amount of rental loss that Tenant proves could be reasonably avoided; and

(d) Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under this lease.

The term "rent" as used in this section shall mean the Minimum Rent, the CAM, and all other sums required to be paid by Tenant pursuant to the terms of this lease. As used in subsections (a) and (b) above, the "worth at the time of award" is computed by allowing interest at the rate of 10 percent per year. As used in subsection (c), the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San

LANDLORD

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Harpreet S Chaudhary

TENANT

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